



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, ADVISORY AND INSOLVENCY

FROM: Dretha Barham /s/ *Dretha Barham*
Director, Collection Policy

SUBJECT: Referrals – Representing IRS in Bankruptcy Court

This memorandum provides interim guidance on updated policies and procedures for referring matters to Area Counsel or the U.S. Attorneys' Offices (USAOs) for representation in bankruptcy court. These procedures are effective beginning April 15, 2014, and will be incorporated into IRM 5.9.4.14. Please disseminate this information to all affected personnel within your organization.

Background

Some cases require IRS representation in bankruptcy court, either to respond to actions or to initiate actions. Except as noted below, the IRS is represented in bankruptcy court by attorneys from the Department of Justice (DOJ). Depending on the type of matter involved, this representation may be handled by either (i) the DOJ Tax Division or (ii) the appropriate USAO, which is also a division of DOJ.

Field Insolvency is responsible for making all referrals for representation in bankruptcy court. Referrals are made to the USAOs or Area Counsel. Field Insolvency does not make any referrals directly to the Tax Division since all matters handled by the Tax Division must be sent to Area Counsel for review and subsequent referral.

Some Area Counsel attorneys have been designated as Special Assistant United States Attorneys (SAUSAs). In districts participating in the SAUSA program, cases are referred to Area Counsel to be handled by SAUSAs, rather than directly referring the case to the USAO. Recently, however, the Office of Chief Counsel announced the decision to end its involvement in the SAUSA program. No new SAUSA cases will be accepted after April 14, 2014. SAUSAs will continue to handle cases assigned to them as of April 14, 2014 until the cases are closed or until December 31, 2014, whichever comes first. At the end of that period any remaining cases will be transferred to DOJ, via either the USAOs or the Tax Division, as appropriate.

The current IRM 5.9.4.14, *Referrals – Representing IRS in Bankruptcy Court*, provides the procedures and scope of authority for Insolvency to refer certain bankruptcy matters to Area Counsel, including SAUSAs, and other bankruptcy matters directly to the USAOs for handling in bankruptcy court. With the termination of the SAUSA program and the transition of the SAUSA work to the USAOs, referrals of cases in districts where Area Counsel previously participated in the SAUSA program will now be handled in the same manner as currently handled in non-SAUSA districts. The authority for directly referring matters to the USAOs in all districts is the delegation of authority published in Chief Counsel Notice CC-2011-006 and in Delegation Order 25-9 (Rev. 1).

Procedures

As of April 15, 2014, no new SAUSA referrals should be made to Area Counsel. Instead, all matters that are subject to direct referral, including matters previously handled by SAUSAs, should be referred directly to the appropriate USAO.

The following matters are subject to direct referral unless the IRS filed a proof of claim in excess of \$1 million:

- A. Motions to dismiss or convert cases, except those involving organizations that claim an exemption under I.R.C. § 501;
- B. Motions on behalf of the IRS and objections to plans based on debts in excess of the eligibility limits for Chapter 13 debtors;
- C. Motions on behalf of the IRS and objections to plans based on the debtors' failure to file tax returns and responses to the debtors' objections to estimated claims filed by the IRS in cases where the debtor failed to file an income tax return;
- D. Responses to objections to IRS claims that are based on the debtors' claimed payment of tax, or claims that debtor filed a return;
- E. Responses to objections to IRS claims that are based on valuation of the property securing the claim;
- F. Responses to objections to IRS claims that are based on the fact that the claim has been superseded by a subsequent claim;
- G. Motions relating to the debtors' failure to make timely payments under a plan and/or accrual of post-confirmation liabilities;
- H. Agreed cash collateral or adequate protection hearings, including stipulations or agreements for the use of the collateral; and
- I. Responses to debtors' motion to determine dischargeability of a tax, except where:
 - (1) the denial of discharge is premised on Bankruptcy Code section 523(a)(1)(C); or
 - (2) the determination concerns a tax for which the debtor filed a return, or a document that purports to be a return, after the due date (including extensions).

Matters involving any prominent individual or corporation, or an important or novel issue, should be referred to Area Counsel rather than the USAO. Field Insolvency should not make any direct referrals to the Tax Division.

Both direct referrals to the USAOs and referrals to Area Counsel preferably should be made using designated pattern referral forms. Regardless of whether such referrals are made using designated referral forms, all referrals from Field Insolvency should include specific information regarding why representation in court is necessary along with any additional information and data necessary to ensure the government's interests are adequately protected, even if a pattern letter is unavailable.

Except as outlined here, all general procedures and guidelines currently in place regarding the making of referrals in bankruptcy cases will remain in effect unless such procedures are subsequently revised.

If you have any questions, please contact me, or a member of your staff may contact Maria Orfanakis, Revenue Officer Analyst, or Deborah Fowler, Tax Analyst.

cc: Director, Field Collection
Director, ECS
www.irs.gov